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EXAMINER	
WARD, JOHN A	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/510,471
Filing Date: October 06, 2004
Appellant(s): VAN OERS ET AL.

DARRIN W. HARRIS
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 2, 2007 appealing from the Office action mailed July 31, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,435,704	**MONTET ET AL**	**8-2002**
EP 0336478	**MAASSEN ET AL**	**11-1989**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Montet et al (US 6,435,704).

Regarding claims 1 and 6, Montet et al discloses a lighting unit provided with a concave reflector (100) having an axis of symmetry (X), a light emission window bounded by the edge of the reflector, an elongated light source (150) which is axially arranged which is arranged substantially on the axis of symmetry and which is accommodated in a holder (152) opposite the light emission window.

A cup-shaped axially positioned cap (400) serving as an optical screening means (column 8, lines 45-57), the cap is surrounded at a distance d (the

distance from the cap to the top of the ring) that partially surround the light source (figure 14) for intercepting a first portion of the light rays from a light source and a screening rings 420, 426 and 427 for intercepting a second portion of unreflected light rays from the light source (column 8, lines 58-65) and the screening ring which extends over a height h (the height of each ring).

Regarding claims 2 and 7, Montet discloses the screening ring extends at the side facing the holder up to a plane transverse to the axis of symmetry and defined by a cup-shaped cap (column 9, lines 10-12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-5 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montet et al as applied to claim 1 above, and further in view of Massen et al (EP 0336478) cited by applicant.

Regarding claims 4-5 and 9-10 Montet et al discloses the light source is a discharge lamp however, Montet et al does not discloses the discharge lamp is a metal halide lamp with ceramic vessel.

Massen et al discloses a discharge lamp having a discharge vessel and a cap. Further, Massen et al teaches a variety of types of electric lamps including a metal halide lamp (specification page 2, lines 49-52) may be in the luminare. It would have bee obvious to one having ordinary skill in the art at the time the invention was made to substitute Montet's discharge lamp with a metal halide discharge lamp because of Massen et al suggestion that a variety of types of lamp can be used. Further, Massen et al discloses the reflector and light source is indetachably integrated into a lamp (See figure 1).

Allowable Subject Matter

Claims 2 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: With regards to claim 3, the prior art of record fails to teach the screening ring forms part of a conical surface with a maximum apex angle of 10 degree.

Claims 11-15 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: With regards to claim 11, nowhere in the prior art is found a "screening ring forming part of a conical surface"

(10) Response to Argument

Regarding the argument Montet et does not teach or suggest the limitations as cited in section **A** set-forth on page 12, that the side walls 420, 426 and 427 cannot be interpreted as a "screening ring" surrounding cap 400 in view of the fact that Montet teaches side walls 420, 426 and 427 are walls of cap 400 and cannot surround themselves, and any reading of side walls 420, 426 and 427 as being separate and distinct entities from the cap 400 contradicts the teaching of Montet. Thus Montet fails to teach or suggest a "screening ring" as cited in claims 1, 2, 4-7, 9 and 10, particularly a screening ring for intercepting unreflected light rays from light source 150 that is not intercepted by side walls 420, 426 and 427 of cap 400.

The examiner fails to agree with the appellant as to the "screening ring" cannot surround the cap, the examiner disagrees for the reason that nowhere in the claims is cited that he ring must be located separated from the cap, that the examiner has given the broadest interpretation in light of the specification as cited in MPEP 2111.

Regarding the argument Regarding section **B** (1) anticipation on page 13 that the Montet fails to teach a standby mode, a sleep mode or the like is not clear and will not be addressed.

Regarding the argument under **B group 1:** the appellant traverses the anticipation rejection of independent claims 6, that Montet fails to show as cup-shaped axially positioned cap serving as an optical screening means that partially surround the light source for intercepting unreflecting light rays, that the cup surrounds at a distance d by screening ring which extends over a height h in the direction of he light emission window.

The examiner fails to agree with the appellant in as mentioned above, in figure 14, the ring 420, 426 and 427 has a distance from the end of cap to the top of the ring being distance d and height h is located in the direction of the light emission window as found in figure 14. Rejection regarding claims 4 and 5 as depending upon claim 1 the reason just cited stands.

Regarding the argument under **B group 2:** The appellant traverses the anticipation rejection of dependent claims 4, 5, 9 and 10, for the same reasons as cited in claim 1. That claims 4 and 5 are deemed allowable because of its dependency upon claim 1, **however disagree examiner disagrees with the appellant for the reasons above in claim 1.above**.

Regarding the argument under **B group 3:** the appellant traverses the anticipation rejection of claims 2 and 7, because the prior art of Montet fails to show" the screening ring extends at the side facing the holder up to a plane traverse to the axis of symmetry as defined by the cup-shaped cap" as cited in claims 2 and 7.

The examiner fails to agree with the appellant for the following reasons, in figure 12-14 a plurality of screening rings 420, 426 and 427 can

be found around the cup 400 and they are extend the side (figure 14) facing the holder 152 symmetrical to the plane transverse to the axis of symmetry and defined by the cup shaped cap is found in figure 14 the ring are located on the cap which face the holder 152 and symmetrical to the plane X.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John A. Ward

JOHN ANTHONY WARD
PRIMARY EXAMINER

Conferees:

James Lee

Darren Schuberg